

APPEAL NO. 032622
FILED NOVEMBER 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 9, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable occupational disease injury on or about _____, and had disability from April 5 through the date of the hearing. The appellant (carrier) appeals these determinations. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The carrier asserts on appeal that the hearing officer erred in finding that the claimant sustained an occupational disease injury because the issue was framed in terms of a specific incident and the claimant had previously "abandoned" the position that the injury was in the form of an occupational disease. We have previously stated that strict rules of pleading do not apply and alternative theories may be advanced if they are not contradictory or mutually exclusive. Texas Workers' Compensation Commission Appeal No. 951848, decided December 18, 1995; Texas Workers' Compensation Commission Appeal No. 001276, decided July 18, 2000. The evidence reflects that the claimant did not initially know what had caused her cervical problems and that she did not initially think that problems had developed over a period of time. However, an occupational disease injury was actually litigated and we perceive no error in the hearing officer's consideration of the same.

Whether the claimant sustained a compensable occupational disease injury and had disability were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Contrary to the carrier's contention on appeal, medical documentation is not necessary to establish injury or disability determinations, as they can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, we note that there is medical evidence supporting the injury determination in this case. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **DALLAS FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSS POLK
14160 DALLAS PARKWAY, SUITE 700
DALLAS, TEXAS 75254.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge